IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(45) **COMPANY PETITION NO. 96 OF 2005**

Saas Construction and Power
Co. Pvt. Ltd. ... Petitioner

Versus

Zee Telefilms Ltd. ... Respondent

Mr. A.N. Vernekar with Mr. Sanjeev Singh i/by Narichania for Petitioner.

Ms. Alpana Ghone i/by P.D.S. Legal for Respondents.

CORAM : A.M. KHANWILKAR,J.
DATED : AUGUST 11, 2005

P.C.

. Heard counsel for the parties. Perused pleadings and documents on record. According to Petitioner, petitioner carried out work in terms of the contract entered into between Petitioner and Respondent to the satisfaction of the respondents. Final bill was raised by the Petitioner with regard to the work discharged under the said contract on 27.1.2004. Two final bills were raised one pertaining to the scheduled items which was in the sum of Rs.24,28,160.93 and second with regard to unscheduled item for the sum of Rs.5,29,367.70. According to contract the work was to be completed by the Petitioner on or before 28.10.2003. It is the case of the Petitioner that due to reasons

beyond control of the Petitioner, the work could be completed only on 1.11.2003 which is after three days of the last date of completion of work. This position is supported by the documents produced by the Petitioner along with petition. It is the case of the Petitioner that at no point of time respondent disputed about the quality of work undertaken by the Petitioner. However,, for the first time, after Petitioners sent reminders for payment of the final bill amount, the respondent in its reply sent on 9.6.2004 has raised dispute about the substandard quality of work undertaken by the Petitioner. According to Petitioner, this stand is an afterthought only to protract payment of the amount payable to the Petitioner.

. The counsel for the respondent company on the other hand submits that there is dispute about nature of work undertaken by the Petitioner and such disputed question cannot be examined and decided in the present proceedings which are of summary nature. Essentially on this ground the petition is resisted. In support respondents would rely on the report dated 3.3.2004. That the work undertaken by the Petitioner was not as per specification in many respects.

. The fact remains that the Architect appointed by the Respondent has finally settled the bill submitted by the Petitioner by providing proportionate deduction in respect of the items which were not as per specifications and proper standard. On that basis the Architect has reduced final bills submitted by the Petitioner to the extent of Rs.18,00,182.00 and Rs.4,14,733.00 respectively. In other words, the report of the architect and the final bill as recommended for payment by him would suggest that the respondent is liable to pay to the Petitioner at least to the extent of sum indicated as above. The respondent has however, so far paid only sum of Rs.12 lacs. to the Petitioner. I find substance in the argument canvassed on behalf of the Petitioner that the stand taken by the respondent about inappropriateness of the work undertaken by the Petitioner is an afterthought. That has come for the first time in June, 2004 after the Petitioner had sent reminder to respondent company. Besides, there is nothing on record even remotely suggest that till June, 2004 the respondents had registered any protest about the quality of work notwithstanding the flat was taken over after the alleged completion of work by the Petitioner on 1.11.2003 and final bill submitted on 27.1.2004.

In other words, the stand taken on behalf of the respondents is not bona fide. The reason for three days delay in completion of work is already spelt out from the documents produced on record by the Petitioner. In my opinion, prima facie the defence of the respondents is not bona fide and honest atleast to the extent amount specified by the Architect to be payable by the respondents, in terms of final bill submitted by the Petitioner. To get over this position, the learned counsel for the respondents would contend that as per the agreement respondent was entitled for claim of damages against the Petitioner and if that claim is considered, the respondent was not liable to pay any amount to the Petitioner. The claim for damages is quantified at Rs.5,000/- for each day's delay in handing over possession. The delay is only of three days, if the case of the Petitioner about completion of work on 28.10.2003 was to be accepted. True it is that the Respondent contends that the work was not completed. However, the fact remains that the Architect nominated by the Respondent has recommended the amount of work done by the Petitioner, assuming the said report is to be accepted as it is for the time being.

. Be that as it may, the counsel for the

respondent had also relied on the decision in the case of B. Vishwanathan Versus Seshasayee Paper and Boards Ltd. Vol. 73 1992 Company Cases 136. The exposition about the legal position stated in this decision cannot be disputed. However, in the fact situation of the present case, I am of the opinion that the defence taken on behalf of the respondent appears to be dishonest and not bona fide. In the circumstances, I propose to pass the following order :

. The respondent is directed to deposit sum of Rs. 10 lacs. in this court within four weeks from today failing which the petition to stand admitted and it will be open to the Petitioner to advertise and publish admission of the Petition. Respondent to inform the Petitioner about such deposit.

. In the event the said amount is deposited in time by the respondent in this court, the petition will stand disposed of with liberty to the Petitioner to take recourse to such proceedings as may be permissible in law. The amount deposited by the respondents in this court will stand transferred to the account of suit proceedings to be taken out by the Petitioner. If Petitioner fails to take out such proceedings within ten weeks

from the date of communication regarding deposit of the amount, it will be open to the respondents to apply to this court for withdrawal of the amount.

(A.M. KHANWILKAR,J.)